



CSA Issues Notice and Request for Comments Regarding Insider Reporting Requirements

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On December 18, 2008, the Canadian Securities Administrators (CSA) published for comment National Instrument 55-104 - *Insider Reporting Requirements and Exemptions* (NI 55-104) and certain related materials. NI 55-104 will set out the main insider reporting requirements and exemptions for insiders of reporting issuers across Canada, other than in Ontario, where the main insider reporting requirements will remain in the *Securities Act* (Ontario). The CSA contends that, despite this difference, the substance of the requirements for insider reporting will be the same across the CSA jurisdictions.

NI 55-104 has been published for comment as part of a CSA initiative to modernize, harmonize and streamline insider reporting in Canada. NI 55-104 is to consolidate the main insider reporting requirements and exemptions in a single national instrument to make it easier for issuers and insiders to understand their obligations and to help promote timely and effective compliance. At the same time, the CSA are also proposing changes to the insider reporting regime that the CSA believes will improve its effectiveness. Specifically, the CSA are proposing to:

- significantly reduce the number of persons required to file insider reports;
- accelerate the filing deadline for insider reports from 10 calendar days to five calendar days;
- simplify and make more consistent the reporting requirements for stock-based compensation arrangements; and
- facilitate insider reporting of stock-based compensation arrangements by allowing issuers to file an "issuer grant report" similar to the current "issuer event report"; and
- require an issuer to disclose in its information circular any late filings by its insiders.

The "reporting insider" concept

Although securities legislation generally imposes an insider reporting requirement on all persons who are "insiders", the CSA have, through various rules and regulations, provided a variety of exemptions for insiders who are not significant shareholders, do not exercise an executive officer or director function and do not routinely have access to material undisclosed information about the reporting issuer prior to general disclosure.

NI 55-104 proposes to utilize an "insider reporting regime" rather than the current approach in an effort to focus the reporting requirement on a narrower, core group of insiders. The core group of "reporting insiders" is to include significant shareholders of the issuer and other insiders who satisfy both of the following criteria:

- the insider in the ordinary course has access to material undisclosed information concerning the reporting issuer prior to general disclosure; and
- the insider, directly or indirectly, exercises, or has the ability to exercise, significant power or influence over the business, operations, capital or development of the reporting issuer.

The reporting insider definition is to comprise a list of persons or companies that includes significant shareholders plus other insiders the CSA think generally satisfy both of the criteria, and a "basket" provision that explicitly cites these two criteria.

The CSA have indicated that narrowing the focus of the insider reporting regime to a core group of senior insiders who have the greatest access to material undisclosed information, together with accelerated reporting, would have an enhanced deterrent effect on the most senior insiders and would result in faster dissemination of the most important information to the market.

Insiders who are not reporting insiders are to remain subject to the provisions in Canadian securities legislation prohibiting improper insider trading.

Reportable transactions

Under Part 3 of the NI 55-104, reporting insiders are generally required to file insider reports disclosing the reporting insider's (i) beneficial ownership of, or control or direction over, directly or indirectly, securities of the reporting issuer, and (ii) interest in, or right or obligation associated with, a related financial instrument involving a security of the reporting issuer.

Part 4 of NI 55-104 contains a supplemental insider reporting requirement relating to certain agreements, arrangements or understandings that may not technically trigger the above tests for reporting but that otherwise satisfy the policy rationale for insider reporting.

Deadline for filing

The CSA are proposing to accelerate the deadline for filing insider reports from 10 calendar days to five calendar days after a trade.

NI 55-104 proposes to retain the current 10 day timeline for filing initial reports to accommodate new filers and the time associated with creating new insider profiles on the System for Electronic Disclosure by Insiders (SEDI).

Comment Period

NI 55-104 has been published for a 90-day comment period.

This update is intended as a summary only and should not be regarded or relied upon as advice to any specific client or regarding any specific situation.

If you would like further information regarding the issues discussed in this update or if you wish to discuss any aspect of this commentary, please feel free to contact us.

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